

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**OPPOSITION OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby files its Opposition with respect to certain aspects of petitions seeking reconsideration of the order of the Federal Communications Commission (the “Commission”) setting forth a framework for Connect America Fund (“CAF”) Phase II competitive bidding processes.² Specifically, the Commission should deny those petitions for reconsideration seeking to evade accountability and reliability in the offering of quality, affordable voice and broadband services to consumers in the areas subject to the CAF Phase II auctions. Moreover, to the extent that the Commission were to decide to revise the areas subject to the auctions in response to certain petitions, it should only do so based upon the unique interplay of the rural broadband experiments and subsequent developments in the CAF Phase II program, and should not view that as precedent for structuring or conduct of any other auctions.

¹ NTCA is an industry association composed of nearly 900 rural local exchange carriers (“RLECs”). Although these entities were traditional rate-of-return-regulated telecommunications companies and “rural telephone companies” as defined in the Communications Act of 1934, as amended (the “Act”), all of NTCA’s members today provide a mix of advanced telecommunications and broadband services, and many also provide video or wireless services to the rural communities they serve as incumbents and also competitors.

² *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016).

As an initial matter, several petitioners seek reconsideration of requirements that are fundamental to the offering of “reasonably comparable” services consistent with the mandate of Section 254(b)(3) of the Act.³ For example, petitions filed by Crocker Telecommunications, LLC (“Crocker”) and Broad Valley Micro Fiber Networks Inc. (“Broad Valley”) seek to sidestep the distinct offering of voice telephony to consumers in the areas subject to CAF Phase II auctions. In particular, these providers urge the Commission to reconsider “a stand-alone voice requirement” separate from bundled broadband connections,⁴ such that the only means for consumers in CAF Phase II auction areas to obtain voice would apparently be to obtain broadband first from these providers, with voice telephony then being an add-on as part of a service bundle.

Representing the industry sector that has done more to edge out broadband to high-cost areas than any other (even as more work remains to sustain such efforts)⁵ and entities that expressed greater initial interest in the rural broadband experiments than any other sector,⁶ NTCA appreciates and shares these entities’ eagerness to deliver on the promise of broadband in rural America. But the fact is that the Commission has rightly and necessarily placed voice and broadband on equal pedestals as supported services – put another way, consumers must be law

³ 47 U.S.C. § 254(b)(3).

⁴ Crocker Petition at 7; Broad Valley Petition at 3-4.

⁵ See, e.g., NTCA 2015 Broadband/Internet Availability Survey Report (July 2016) (finding that 85 percent of consumers served by 131 RLEC respondents could obtain speeds of 10Mbps or greater downstream, with 71 percent able to receive speeds of 25 Mbps or greater downstream (available at: <https://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2015ntcabroadbandsurveyreport.pdf>).

⁶ See List of Rural Broadband Experiment Expressions of Interest (available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-326292A1.pdf).

have access to *both* reasonably comparable voice and broadband as distinct matters to enable *true* universal service. Although it is settled for universal service purposes that voice telephony can be delivered via any technological means feasible as long as it is provided at reasonably comparable rates and subject to sufficient performance metrics that includes reliable access to emergency services,⁷ a provider that seeks or promises *only* to deliver voice as a mere add-on to broadband service – or seeks to sidestep the offering of voice telephony altogether – defies consumer choice and cannot and does not deliver on the mission of universal service, a particularly odd and glaring result when the Commission has placed such primacy on the availability, reliability, and affordability of voice services in other contexts.⁸

Another concern about the reliability and accountability of service providers in the CAF Phase II context arises out of the Southern Tier Wireless, Inc. (“Southern Tier Wireless”) petition for reconsideration. Specifically, Southern Tier Wireless effectively acknowledges that limited spectrum resources may preclude fixed wireless providers from delivering broadband to *all*

⁷ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-94 (2011), at ¶¶ 77-83.

⁸ *See, e.g., Ensuring Customer Premises Equipment Backup Power for Continuity of Communications*, PS Docket No. 14-174, Report and Order, FCC 15-98 (rel. Aug. 7, 2015), ¶ 3 (adopting “backup power obligations on providers of facilities-based fixed, residential voice services that are not line-powered to ensure that such service providers meet their obligation to provide access to 911 service during a power outage”); *Technology Transitions*, GN Docket No. 13-5, *et al.* Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16-90 (rel. Jul. 15, 2016), ¶ 5 (adopting “a three- pronged test for determining whether a new service qualifies as an adequate replacement for a legacy voice service as part of [the Commission’s] Section 214 discontinuance application process” to “ensure that consumers can continue to expect strong service quality, *access to critical applications such as 911*, and interoperability with other key applications and functionalities”) (emphasis added); *Improving 911 Reliability*, PS Docket No. 13-75, *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket No. 11-60, Report and Order, FCC 13-158 (rel. Dec. 12, 2013).

consumers at the speeds promised in a CAF Phase II auction bid,⁹ but nonetheless seeks an apparent “free pass” for such limitations as long as the fixed wireless provider can offer the speed promised to *some* consumers in the relevant areas. The Southern Tier Wireless proposal is particularly troubling in that it would appear to permit a provider to win a CAF Phase II bid even though its spectrum resources and network deployment plans may enable only a handful of consumers (or maybe even just one) to obtain broadband at the promised speed. NTCA recognizes and shares the concern of Southern Tier Wireless about the burden and administrative feasibility of subsequently measuring performance at each location – and, indeed, the Commission has rightly recognized this concern in suggesting that performance will likely be measured based upon a sampling of supported locations in the relevant areas.¹⁰ NTCA also has previously recognized that fixed wireless technologies do offer promise as a “tool in the toolkit” of achieving universal services in some of the highest cost areas, but that this technology can also suffer from limitations in serving multiple consumers in an area due to its shared capacity nature.¹¹ Nonetheless, such concerns should not and cannot be extended to an illogical extreme to enable funding of – and excuse compliance of – a project where *it is effectively known a priori* that the deployment will not enable access to broadband at the supported speeds to all consumers in the relevant areas. In

⁹ Southern Tier Wireless Petition at 1-2.

¹⁰ *Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 12623 (2014).

¹¹ See *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket Nos. 10-90 and 05-337 (filed March 10, 2015) (attaching a paper prepared by Vantage Point Solutions comparing technical characteristics of wireless and wireline networks).

short, no “free passes” should be given with respect to the expectation that if an eligible telecommunications carrier is bidding to serve an area, it is committing to serve all consumers (or the requisite number) in that area at the pledged levels of service.¹²

Finally, NTCA opposes the ViaSat, Inc. (“ViaSat”) petition for reconsideration in two respects that would undermine consumer access to reasonably comparable voice and broadband services in the near- and longer-term. First, ViaSat urges the Commission to reconsider the notion that any areas which satellite broadband providers win in the CAF Phase II auction may be “re-auctioned” in 2020 to the extent that consumers are declining by that time to adopt the services offered by such providers at a rate that is 35 percent less than the national average adoption rate.¹³ Although ViaSat claims that reaching a 32 percent adoption rate (for example, based upon current national adoption averages) is “a significant hurdle,”¹⁴ to the contrary, such an “adoption metric” is a prudent check to confirm that consumers are actually finding satellite broadband a meaningful, reliable, and affordable way of securing Internet access. Moreover, while ViaSat asserts that its achievement of something like a 32 percent adoption rate is “extremely unlikely given that the relevant areas are the hardest-to-serve parts of the country,” NTCA members have achieved remarkable success in stimulating broadband adoption in those truly hardest-to-serve areas that

¹² For purposes of clarification, this is not to say that all consumers must take at the level of service pledged; the choice of what specific broadband package to take, of course, should be left entirely up to the consumer. But the eligible telecommunications carrier should still in the first instance be prepared to live up to its pledged auction bid to make broadband of the requisite speed available to every consumer in the relevant area that wants it.

¹³ ViaSat Petition at 2-3.

¹⁴ *Id.* at 3.

were first left over when carriers first started “divvying up” rural America decades ago.¹⁵ To be clear, stimulating broadband adoption – and even sustaining underlying broadband networks once built – remains a very real and ongoing challenge in all rural areas, including those served by NTCA members. But given the track record of consumer reluctance to accept satellite broadband to date,¹⁶ and in light of questions as to whether satellite broadband will be able to keep pace with consumer demand for broadband speeds that have increased dramatically in just a few quick years,¹⁷ it is hardly unreasonable to have some measure to evaluate whether a satellite broadband provider is achieving an adoption rate that is *less than half* of the current national average over three years from now in evaluating effective uses of CAF II resources.¹⁸

¹⁵ See footnote 5, *supra*.

¹⁶ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capacity to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, 2016 Broadband Progress Report, FCC 16-6 (rel. Jan. 29, 2016), at n. 79 (indicating that total satellite *and* fixed wireless broadband adoption *combined* stands at less than 3 percent of the overall fixed broadband market).

¹⁷ See, e.g., Prepared Remarks of FCC Chairman Tom Wheeler, “*The Facts and Future of Broadband Competition*,” 1776 Headquarters, Washington, D.C. (September 4, 2014). (“A 25 Mbps connection is fast becoming ‘table stakes’ in 21st century communications. Today about 80 percent of American homes have access to a broadband connection that delivers 25 Mbps or better. . . . We will continue to establish requirements for our universal service programs, but beyond that, consumers are establishing their own expectations. Today, a majority of American homes have access to 100 Mbps. It is that kind of bandwidth that we should be pointing to as we move further into the 21st century. And while it’s good that a majority of American homes have access to 100 Mbps, it is not acceptable that more than 40% do not.”)

¹⁸ This being said, it would seem reasonable to include speeds lower than the top tier pledged by the provider in “measuring” adoption because consumers may choose lower-speed offerings as best suiting their needs. For example, if a provider pledges to (and presumably then does) deliver 25/3 Mbps broadband to consumers, but if some consumers then choose to take only 10/1 Mbps or even 4/1 Mbps service, it would seem reasonable to treat those consumers as having adopted broadband, even if it was at a level below the specific tier pledged for availability in the bid.

Second, NTCA opposes ViaSat’s latest effort to minimize the consideration of satellite spectrum limitations in auctioning of CAF Phase II funds. In particular, ViaSat seeks to sidestep an actual demonstration of capacity needed to deliver services in supported areas by pointing generally to space station authority rather than actual user terminal and gateway licenses, and by making “assumptions” about network utilization in asserting sufficient capacity.¹⁹ Although ViaSat attempts to explain these arguments away as addressing concerns about aggregation and congestion that arise on networks of all kinds,²⁰ as NTCA has previously demonstrated, there are very real differences between terrestrial and satellite networks – including most prominently sharing of capacity among users rather than just at specific upstream aggregation points (which *also* apply to satellite networks) – and very real concerns about the sufficiency of satellite broadband capacity and the follow-on effects with respect to transmittal and latency of voice services in particular.²¹ For these reasons, the Commission should deny the “confirmation” sought by ViaSat and proceed with substantial caution with respect to any purported “assumptions” about what kinds of capacity may be provided via a satellite broadband service.

As one final matter, the National Rural Electric Cooperative Association (“NRECA”) and the Utilities Telecom Council (“UTC”) raise questions surrounding the interplay of the CAF Phase II program and the prior rural broadband experiments (“RBEs”) in identifying which areas will

¹⁹ ViaSat Petition at 6.

²⁰ *Id.* at 7 and n. 13.

²¹ See *Ex Parte* Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, Commission, WC Docket No. 10-90 (filed Nov. 7, 2013) (attaching a paper prepared by Vantage Point Solutions analyzing technical characteristics of satellite-based telecommunications and broadband services).

now be subject to auction.²² NTCA takes no specific position with respect to this issue, as it arises largely out of the unique sequencing of the RBEs and the CAF Phase II auctions and the challenges of coordinating those two initiatives. NTCA does wish to note, however, that it should be clear that any decision rendered with respect to this matter does not and will not have any practical or precedential effect upon areas in which RLECs operate as the incumbent precisely because neither the CAF II program itself nor the RBEs were (or are) applicable in areas served by RLECs.²³

For the foregoing reasons, NTCA respectfully requests that the Commission deny: (1) the petitions for reconsideration filed by Crocker and Broad Valley as they ignore that, by law, voice telephony is a separate supported service and would preclude consumer access to quality, affordable voice services other than as part of a bundle with a provider's broadband service offering; (2) the petition for reconsideration filed by Southern Tier Wireless as it could enable delivery of lower quality services to consumers in certain areas notwithstanding plain assertions by the provider in its CAF Phase II auction bid that all consumers in the areas in question can expect to receive a certain baseline level of service; and (3) the petition for reconsideration filed by ViaSat because it would risk undermining access to reliable broadband that consumers actually want and need and that keeps pace with increasing demand. NTCA further respectfully requests that, to the extent the Commission decides to revise the areas subject to the auctions in response to the NRECA/UTC petition, it does so only on a limited basis in price cap carrier-regulated areas based specifically upon the unique sequencing, interplay, and applicability of the RBE and CAF Phase II auction programs.

²² NRECA/UTC Petition at 3-11.

²³ *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8777 (2014), at ¶ 17 and n. 43.

Respectfully submitted,



By: /s/ Michael R. Romano

Michael R. Romano

Senior Vice President –

Industry Affairs & Business Development

NTCA–The Rural Broadband Association

4121 Wilson Boulevard, Suite 1000

Arlington, VA 22203

mromano@ntca.org

703-351-2000 (Tel)

September 2, 2016